

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>12/15/2020</u>
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EDWIN THEVENIN,

Plaintiff,

-v-

II IN LOT PARKING CORP *et al.*,

Defendants.
-----X

19-CV-6010 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:

On December 14, 2020, Plaintiff informed the Court that he has accepted Defendants' Offer of Judgment under Federal Rule of Civil Procedure 68, Dkt. 43, and attached the Offer of Judgment as an exhibit, Dkt. 43-1. Plaintiff also filed a Proposed Judgment for the Court to enter. Dkt. 44.

Once a plaintiff accepts a defendant's offer of judgment under Rule 68, "either party may then file the offer and notice of acceptance, plus proof of service." Fed. R. Civ. P. 68(a). Once this is complete, "[t]he clerk must then enter judgment." *Id.* However, the clerk may not enter judgment if the parties fail to file proof of service. *See Mei Xing Yu v. Hasaki Rest., Inc.*, 944 F.3d 395, 412 n.96 (2d Cir. 2019) (stating that Rule 68 requires "the parties to file . . . proof of service, with the district court before the clerk can enter the judgment"); *see also Chiw Yin Chan v. 520 Asian Rest. Corp.*, No. 19 Civ. 9521 (JPC), 2020 WL 7043874, at *1 (S.D.N.Y. Dec. 1, 2020) (noting that the text of Rule 68(a) "suggests that a plaintiff must serve the notice accepting the offer before either party may file with the Court the necessary Rule 68(a) documents"). Here, the parties did not file proof of service of the offer or notice of acceptance. Because the parties failed to comply with the requirements of Rule 68(a), the Court may not direct the Clerk of Court to enter judgment.

The parties shall file proof of service within one week of the filing of this Order.

SO ORDERED.

Dated: December 15, 2020
New York, New York

A handwritten signature in black ink, appearing to read "John P. Cronan", is written over a horizontal line.

JOHN P. CRONAN
United States District Judge